THE OBLIGATIONS OF PUBLIC SERVICES TO MAKE CONNECTIONS.

THE law relating to connecting services is quite voluminous, but upon the matter with which the present paper is concerned there is as yet very little authority. There are, for example, many cases as to the respective liabilities of connecting carriers, but very few as to the duty of an unwilling carrier to participate in connecting carriage. The problem cannot be dismissed by saying that for a carrier to make arrangements with one connection while refusing to do the same with another is illegal discrimination, for that this is true only to the extent that public duty is involved; so that the fundamental question is, as always, the extent of the duty of a railroad in dealing with connecting railroads. May it refuse altogether to have dealings with them, to accept goods from them, for example? Obviously this will not do; it is the duty of the railroad as a common carrier to accept from any person tendering goods. On the other hand, it can hardly be said that the railroad must accord to all railroads every special privilege that it gives one railroad in a joint traffic agreement; for what it does for one as a favor, another cannot demand as a right. The truth of this matter must therefore lie between two extremes in some practicable compromise that will meet the necessities of the public while recognizing as far as may be the independence of the carriers.

I.

Of the duty of the initial company to undertake service to the point of connection with the succeeding company there can be no doubt. If it be a case of carriage, the initial carrier is certainly asked no more than to act within his profession if he is requested to take certain goods tendered at one point on his line to another point where that line connects with the second carrier.[1] This elementary point has been most litigated in recent times in regard to telegraph companies, the initial company sometimes disliking to accept a message to a connecting point, there to be delivered to

[1] Fremont, E. & M. V. R. R. Co. *v.* Waters, 50 Neb. 592 (1897); Hooper *v.* Chicago & N. Ry. Co., 27 Wis. 81 (1870).

another company, very often a competitor. But the established duty in regard to connecting carriage was too close an analogy for the telegraph company to escape it.[1] This was plainly said in a Texas case:[2] "The law relating to the receiving and forwarding of telegraphic messages to connecting lines is so nearly analogous to that in regard to common carriers that the established rules of law that determine the liability of the common carrier apply with equal force to telegraph companies. Each can restrict its liability to its own line, but each must receive and forward with diligence to the connecting line, and each will be held liable for its failure or refusal to perform that duty." There is but one peculiarity in the telegraph situation, and that is because of difference in the conditions. In the case of carriage there are usually marks on the package designating its course; moreover its bills accompany it. In the case of the telegraph, therefore, it is a reasonable requirement by the first company that words designating the connection desired shall be sent with the message, or the second company may require that words designating its origin shall be paid for.[3]

In several kinds of connecting service the duty of each successive party to deliver over to the next in turn is the normal one. Thus, as a telegraph company undertakes delivery in the place of address, which in this case should be at the office of the telegraph company designated as the connection. So, in certain kinds of carriage, as express service, the carrier is bound to deliver to the addressee. But railroads and steamboats are not normally bound to do more than deposit the goods carried on their own wharves or at their own terminal. There is thereupon, as all will remember, a conflict of authority as to how soon they cease to be liable as common carriers; but at all events it must be very soon thereafter without any attempt on their part to make delivery. But in the case of connecting carriage there is no conflict of authority, the whole matter being handled upon a different basis. It is universally established that when successive carriage is involved the law necessarily throws upon the accepting carrier the duty of tendering the goods for further transportation to the succeeding carrier; and normally, until he effectuates such delivery, the original carrier remains liable as a common carrier.[4] This liability

[1] United States *v.* Northern Pac. R. Co., 120 Fed. Rep. 546 (1903).

[2] W. U. Telegraph Co. *v.* Simmons, 93 S. W. 686 (Tex. Civ. App.) (1906).

[3] Atlantic & Pacific Telegraph Co. *v.* W. U. Telegraph Co., 4 Daly (N. Y.) 527 (1873).

[4] Mount Vernon Co. *v.* Ala. Gt. S. R. R. Co., 92 Ala. 296 (1890); Palmer *v.*

would usually continue, as the cases just cited hold, until the first carrier had deposited the goods where the second carrier receives them, and given notice, as would generally be requisite, to the succeeding carrier that the goods were there awaiting his transportation,[1] together with the necessary instructions for forwarding the goods.[2] If, however, the second carrier finally refuses the goods, the first carrier has performed its duty as such. But there rests upon it in this case, as in many other cases of unexpected interruption, the duty to store the goods[3] refused, and notify the consignor of the situation.[4]

II.

Of the duty to receive what is properly tendered to it by its predecessor also there can be no doubt. This really relates back to the primary duty to the original person requesting the service.[5] It

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Chicago, B. & Q. R. R. Co., 56 Conn. 137 (1888); Wallace *v.* Rosenthal, 40 Ga. 419 (1869); Illinois Central R. R. Co. *v.* Mitchell, 68 Ill. 471 (1873); Moore *v.* Michigan Central R. R. Co., 3 Mich. 23 (1853); Dunson *v.* New York Central R. R. Co., 3 Lans. (N. Y.) 265 (1870); Miller Bros. *v.* Railway Co., 33 S. C. 359 (1890); Insurance Co. *v.* Railroad Co., 8 Baxt. (Tenn.) 268 (1874); Lewis *v.* Chesapeake & Ohio Ry. Co., 47 W. Va. 656 (1900); Hooper *v.* Chicago & N. Ry. Co., 27 Wis. 81 (1870).

[1] Myrick *v.* Michigan Cent. R. R. Co., 9 Biss. (U. S.) 44 (1879); Selma, etc., R. R. Co. *v.* Butts & Foster, 43 Ala. 385 (1869); Colfax Mountain Fruit Co. *v.* Southern Pac. Co., 46 Pac. 668 (1896) (Cal.); Palmer *v.* Chicago, B. & Q. R. R. Co., 56 Conn. 137 (1888); Louisville, St. L. & Texas Ry. Co. *v.* Bourne & Embry, 16 Ky. L. Rep. 825 (1895); Rickerson Roller Mill Co. *v.* Grand Rapids & I. R. R. Co., 67 Mich. 110 (1887); Dunn *v.* Hannibal, etc., R. R. Co., 68 Mo. 268 (1878); Sprague *v.* New York Cent. R. R. Co., 52 N. Y. 637 (1873).

[2] Michigan S. & N. I. R. R. Co. *v.* Day, 20 Ill. 375 (1858); Hutchings *v.* Ladd, 16 Mich. 493 (1868); Sherman *v.* Hudson River R. R. Co., 64 N. Y. 254 (1876); Little Miami R. R. Co. *v.* Washburn, 22 Oh. St. 324 (1872); Forsythe *v.* Walker, 9 Pa. St. 148 (1848); Railroad *v.* Cabinet Co., 104 Tenn. 568 (1900); Fort Worth & D. C. Ry. Co. *v.* Masterton, 95 Tex. 262 (1902).

[3] Buston *v.* Pennsylvania R. Co., 119 Fed. 808 (1903); Louisville & N. R. R. Co. *v.* Duncan & Orr, 137 Ala. 446 (1902); Dalzell *v.* Steamboat Saxon, 10 La. Ann. 280 (1855); Baltimore & Ohio R. R. Co. *v.* Schumacher, 29 Md. 168 (1868); Wehmann *v.* Minneapolis, St. P. & S. Ste. M. Ry. Co., 58 Minn. 22 (1894); Rawson *v.* Holland, 59 N. Y. 611 (1875); Bird *v.* Railroad, 99 Tenn. 719 (1897); Wood *v.* Milwaukee & St. P. Ry. Co., 27 Wis. 541 (1871).

[4] *In re* Peterson, 21 Fed. 885 (1884); Louisville & N. R. R. Co. *v.* Farmers, etc., Live Stock Commission Firm, 21 Ky. L. Rep. 708 (1899); Fisher *v.* Boston & Maine R. R. Co., 99 Me. 338 (1904); Cramer *v.* American M. U. Express Co. & Merchants Dispatch Co., 56 Mo. 524 (1874); Lesinsky *v.* Great Western Dispatch, 10 Mo. App. 134 (1881); Johnson *v.* New York Central R. R. Co., 33 N. Y. 610 (1865); Louisville, etc., R. R. Co. *v.* Campbell & Richards, 7 Heisk. (Tenn.) 253 (1872).

[5] The initial carrier is not, in cases of successive carriage, liable to the shipper for the refusal of the succeeding carrier to accept the goods. Dunbar *v.* Port Royal, etc.,

is to him that the succeeding carrier makes default when there is a refusal by the succeeding carrier he has designated upon tender of the goods by that preceding carrier as the agent of the shipper to that succeeding carrier.[1] "It is established law, made necessary from the character of the business, that it is the duty of common carriers to accept freight tendered by another common carrier, and that a consignor of goods to be carried over successive routes makes the first and each successive carrier his forwarding agent. This is from the necessities of the case. The consignors cannot practically travel with the goods which are shipped, and there must be some one who is responsible for transactions in regard to their shipment over the different routes. Each succeeding carrier who takes charge of the goods is responsible for the goods, and therefore becomes an agent of the consignor for the goods."[2] Similarly a second telegraph company chosen as the connection is in default when it refuses to accept a message tendered on behalf of its patron by the initial company.[3] It follows that the connecting company can make no unreasonable requirement which would seriously interfere with the course of through service. A connecting railroad cannot require as to freight tendered by a connection that the shippers must themselves appear at the point of connection, and rebill their goods.[4] Nor can a telegraph company make the vexatious requirement that it will not recognize the tendering company as the agent of the sender unless he files a written power of attorney.[5] "This was imposing what was practically impossible in the due and speedy transmission of a message which was to go to Europe; for to carry out such a regulation as this the despatch when recorded at New York would have to be

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Ry. Co., 36 S. C. 110 (1891). On the contrary, it is the refusing carrier who is liable directly to the shipper for such refusal. Crosby *v.* Pere Marquette R. R. Co., 131 Mich. 288 (1902).

[1] Dunham *v.* Boston & M. R. R. Co., 70 Me. 164 (1879); Gulf & Interstate Ry. Co. *v.* Texas & N. O. Ry. Co., 93 Tex. 482 (1900); Sterling *v.* St. Louis, I. M. & S. Ry. Co., 38 Tex. Civ. App. 451 (1905).

[2] The quotation is from Andrus *v.* Columbia & O. Steamboat Co., 47 Wash. 333 (1907).

[3] Thurn *v.* Alta Telegraph Co., 15 Cal. 472 (1860); Conyers *v.* Postal Telegraph Cable Co., 92 Ga. 619 (1893); Western Union Telegraph Co. *v.* Carew, 15 Mich. 525 (1867); Telegraph Company *v.* Munford, 87 Tenn. 190 (1888); Western Union Telegraph Co. *v.* Simmons, 93 S. W. 686 (1906) (Tex. Civ. App.).

[4] See Dunham *v.* B. & M. R. R., 70 Me. 164.

[5] The quotation is from Atlantic & Pacific Tel. Co. *v.* Western Union Tel. Co., 4 Daly (N. Y.) 527 (1873).

kept there until the plaintiff could in each case receive the power of attorney by mail."

The patron may himself decide by what successive parties he wishes the service performed, and from these directions the parties would usually deviate at their peril.[1] Consequently a rule of a telegraph company that messages will be taken only by the most direct connections notwithstanding the sender's instructions is inconsistent with its duty.[2] But even if such explicit directions are given, the forwarding party should notify the patron if he knows that the use of the connection designated will probably cause unusual delay;[3] and if it later turns out that the route designated is impracticable, another may be taken.[4] Failure of the previous party to transmit his instructions to his successor is a breach of duty to the patron, and for the consequential deviation that party is liable.[5] And if the succeeding party knew of the violation of the instructions, he is also subject to all the disabilities of one concerned in a deviation.[6] On the question of the position of a second party when a first party acts contrary to instructions without disclosing that he is doing so, some few cases[7] have held that the shipper may repudiate the subsequent transaction; but by the present weight of authority it is held that in forwarding goods to their destination by another connection than the one designated, the first carrier is held out to the second carrier as having apparent authority;[8] so that the second carrier even has a lien upon the goods not

[1] Georgia R. R. Co. *v.* Cole & Co., 68 Ga. 623 (1882); Brown & Haywood Co. *v.* Pennsylvania Company, 63 Minn. 546 (1896); Hinckley *v.* New York Central & Hudson River R. R. Co., 56 N. Y. 429 (1874); Congar *v.* Galena & Chicago U. R. R. Co., 17 Wis. 477 (1863).

[2] Western Union Telegraph Co. *v.* Turner, 94 Tex. 304 (1901).

[3] Inman & Co. *v.* St. L. S. W. Ry. Co., 14 Tex. Civ. App. 39 (1896).

[4] Regan *v.* Grand Trunk Ry., 61 N. H. 579 (1881).

[5] Harding *v.* International Navigation Co., 12 Fed. 168 (1882); Hutchings *v.* Ladd, 16 Mich. 493 (1868); Dana, Agt. N. Y. Cen. & Hudson River R. R. Co., 50 How. Pr. (N. Y.) 428 (1875); Little Miami R. R. Co. *v.* Washburn, 22 Oh. St. 324 (1872); Forsythe *v.* Walker, 9 Pa. St. 148 (1848); Booth *v.* Missouri K. & T. Ry. Co., 37 S. W. 168 (1896) (Tex.).

[6] Patten *v.* Union Pac. Ry. Co., 29 Fed. 590 (1886); Denver & R. G. Ry. Co. *v.* Hill, 13 Colo. 35 (1889); Georgia R. R. Company *v.* Cole & Co., 68 Ga. 623 (1882); Robinson *v.* Baker, 5 Cush. (Mass.) 137 (1849); Briggs *v.* Boston & Lowell R. R. Co., 6 Allen (Mass.) 246 (1863); Johnson *v.* New York Central R. R. Co., 33 N. Y. 610 (1865); Philadelphia, etc., R. R. Co. *v.* Beck, 125 Pa. St. 620 (1889).

[7] Fitch *v.* Newberry, 1 Doug. (Mich.) 1 (1843).

[8] Price *v.* Denver & R. G. Ry. Co., 12 Colo. 402 (1888); Bird *v.* Georgia R. R., 72 Ga. 655 (1884); Crossan *v.* N. Y. & N. E. R. R. Co., 149 Mass. 196 (1889); Bowman *v.* Hilton, 11 Oh. 303 (1842); Knight *v.* Prov. & Worc. R. R. Co., 13 R. I. 572 (1882).

only for his own charges, but for those which he had advanced against them relying upon the authority of the first carrier. It is needless perhaps to add that if the patron leaves forwarding to the discretion of the initial party, he is bound to the disposition which his agent makes, the agent himself being liable for proper discretion in choosing the connection.[1]

III.

As all obligations of the succeeding party to undertake service may thus be related back to the rights of the original patron whom the preceding party represents, the succeeding party may refuse to do anything not within its duty to patrons generally for customers using particular agencies, even though it would accept if another connection had tendered. Thus it may refuse to render its service when they are requested through one connection unless its charges are tendered it or secured to it, although it does not generally insist upon prepayment;[2] and, of course, it may refuse in taking over from one connection to advance the previous charges, although it does this in its dealings with other connections.[3] There have been some cases dealing with the obligations of connecting

[1] Snow *v.* Indiana, B. & W. Ry. Co., 109 Ind. 422 (1886); Simkins *v.* Norwich & N. L. Steamboat Co., 11 Cush. (Mass.) 102 (1853); Post *v.* Railroad, 103 Tenn. 184 (1899).

It would not seem that it would be a difficult question to determine whether a particular case really involves connecting service with its accompanying obligations; and yet certain decisions will show that this problem may be very difficult. Thus a transfer company employed by one carrier to transfer the goods to the next carrier, or a cartage company employed by the last carrier to deliver the goods to the consignee, or a stockyard to which a railroad delivers cattle, or a telephone used to deliver a telegram, or a hackman employed by a passenger at a railroad station, or a teamster employed by the consignee to remove goods from the carrier's station, — are none of them connecting services. These are not all of the same class, although they come to the same result. In the transfer, cartage, stockyards, and telegraph cases there is no connecting service, because the patron is dealing with but one service which uses the others as a subordinate instrumentality to perform its service. In the hackman and teamster cases the patron employs the additional service upon a separate basis altogether. But as to both sets of cases the law is that the particular service is free to make arrangements without regard to the peculiar law governing connecting service.

[2] Little Rock & M. R. Co. *v.* St. Louis, I. M. & S. Ry. Co., 59 Fed. 400 (1894); Little Rock & M. R. Co. *v.* St. Louis S. W. Ry. Co., 63 Fed. 775 (1894).

[3] Southern Indiana Exp. Co. *v.* United States Exp. Co., 92 Fed. 1022 (1899); Gulf, C. & S. F. Ry. Co. *v.* Miami S. S. Co., 86 Fed. 407 (1898); Baltimore & O. R. Co. *v.* Adams Express Co., 22 Fed. 32 (1884); Oregon Short Line & U. N. Ry. Co. *v.* Northern Pac. R. R. Co., 61 Fed. 158, 15 U. S. App. 479 (1894).

express companies in recent years in which both aspects of the problem were discussed. To quote from one[1] of them: "The same rule applies whether the articles of trade and commerce are received from the original consignor or from a connecting carrier. An express company, in the absence of contract, is under no obligation to receive and transport for the original consignor, or to continue the transportation for a connecting carrier, without the prepayment of its charges if demanded. The furnishing of equal facilities, without discrimination, does not require a common carrier to advance money to all other carriers on the same terms, nor to give credit for the carriage of articles of trade and commerce to all carriers because it extends credit for such services to others."[2]

But no policies can be adopted inconsistent with public duty whereby business coming from one connection is favored. Thus, in one of the early cases in public service, Bennet *v.* Dutton,[3] still a leading case, it was held that a stage line running from Nashua to Amherst could not adopt the rule of taking passengers who came from Lowell to Nashua on French's line and refuse those who came on Tuttle's line. In that pioneer case Chief Justice Parker, after stating the general principles of public duty, thus applied them to the case in hand: "The defendant might well have desired that passengers at Lowell should take French's line because it connected with his. But if he had himself been the proprietor of the stages from Lowell to Nashua, he could have had no right to refuse to take a passenger from Nashua, merely because he did not see fit to come to that place in his stage. It was not for him to inquire whether the plaintiff came to Nashua from one town or another, or by one conveyance or another. That the plaintiff proposed to travel onward from that place could not injuriously affect the defendant's business; nor was the plaintiff to be punished because he had come to Nashua in a particular manner."[4]

[1] Southern Indiana Express Co. *v.* United States Express Co., 88 Fed. 659 (1898).

[2] Oregon Short Line & U. N. Ry. Co. *v.* Northern Pac. R. Co., 61 Fed. 158 (1894); 51 Fed. 465 (1892); Little Rock & M. R. Co. *v.* St. Louis S. W. Ry. Co., 63 Fed. 775 (1894); Little Rock & M. R. Co. *v.* St. Louis, I. M. & S. Ry. Co., 41 Fed. 559 (1890).

[3] 10 N. H. 481 (1839).

[4] But the Chief Justice added, and this is good law also: "The defendant had good right, by an agreement with French, to give a preference to the passengers who came in French's stage; and as they were carriers of the mail on the same route, it seems he was bound so to do, without an agreement. If, after they were accommodated, there was still room, he was bound to carry the plaintiff, without inquiring in what line he came to Nashua."

IV.

One thing is as certain as anything can be at common law in this doubtful subject, and that is that those who have provided certain facilities in order to give a designated service are under no obligation to go beyond the service they have professed and substantially extend their existing facilities so as to make physical connection with another service. To require this would be wholly outside the accepted theory of the proper restriction of public obligation to the profession made. In a leading federal case[1] in refusing to order a railroad company to make connections with a switching company, notwithstanding the general requirements for proper treatment of connecting carriers in the interstate commerce legislation, one of the principal points made by the court was this: "Neither this nor any other provision of the law requires of the common carrier of interstate commerce the duty of either forming new connections or of establishing new stations for the reception and delivery of freights. The act to regulate commerce deals with such common carriers as it finds them, and leaves to them full discretion as to what extensions they will make of their lines, the connections they may form, and the yards and depots they may choose to establish. When railroad companies, in compliance with their charter obligations, have provided themselves with convenient, suitable, and ample stations and depots for the accommodation of their business, the law imposes upon them no duty, either to the public or other railroad lines, of making new stations, yards, or depots, even though such additional constructions might be for the convenience of the public, or other carriers." However in some jurisdictions recently more explicit statutes have been passed providing that when two services nearly approach each other short lines for making connections should be constructed.[2] And if this requirement is properly safeguarded, it must be admitted that the legislation is not so outrageous as to be unconstitutional.[3]

The traditional rule at common law has been that there is no obligation to permit connection at junction points.[4] This cer-

[1] Kentucky & I. Bridge Co. *v.* Louisville & N. R. Co., 37 Fed. 567 (1889).

[2] Rutland R. R. Co. *v.* Bellows Falls & S. R. St. Ry. Co., 73 Vt. 20 (1900).

[3] This particular problem is really bound up in the general problem as to the extent of the duty to provide spur tracks for special business, upon which there is still doubt upon the authorities.

[4] Shelbyville R. R. Co. *v.* Louisville, C. & L. R. R. Co., 82 Ky. 541 (1885); Pennsylvania R. R. Co. *v.* Baltimore, etc., R. Co., 60 Md. 263 (1883).

tainly cannot be true if there is a public station at that point, for at such a station, as has just been seen, goods must be received whether tendered by a connection or any one else. It may be true that there is not as yet an obligation to stop for the exchange of business at junction points, as such, where no station has been established, as the United States Supreme Court has held.[1] It may even be true that there is no obligation to accept business at a private station from one connection, even if business is there accepted from another, as the federal courts have also held.[2] But if there is a sufficient amount of business that would usually be tendered at a junction if a station should be opened, ought there not to be a public station established at that precise point? A New Hampshire court[3] has gone so far as to say that a union station ought to be built by two roads which made connections in a city, if it were shown that public convenience required it.[4]

V.

As to whether transportation must be given to the goods offered by a first carrier to a second carrier in the cars in which they are tendered by the first carrier, regardless of the desires of the second carrier, there is still some conflict of authority. In Oregon Short Line and Utah Northern Railway Company *v.* Northern Pacific Railroad Company,[5] the utilization of foreign cars being in question, the law as it then stood was summarized thus by Mr. Justice Field: "As the receiving company is under no obligation to take the freight in the cars in which it is tendered, and transport it in such cars, when it has cars of its own not in use to transport it, there can be no custom that it shall pay the owner of such cars, should it receive them in such case, car mileage for their use. The car mileage in that case must be upon an arrangement be-

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[1] Atchison R. Co. *v.* Denver, etc., R. Co., 110 U. S. 667 (1884); St. Louis & S. F. Ry. Co. *v.* Marrs, 31 S. W. 42 (1895) (Ark.).

[2] Gulf, C. & S. F. Ry. Co. *v.* Miami S. S. Co., 86 Fed. 407 (1898); Ilwaco Ry., etc., Co. *v.* Oregon Short Line, etc., Ry. Co., 57 Fed. 673 (1893).

[3] Concord & M. R. R. Co. *v.* Boston & Me. Ry. Co., 67 N. H. 465 (1893).

[4] This particular problem is also bound up in a general problem as to the jurisdiction of the courts to order the establishment of stations, as to which a square conflict of authority still persists.

[5] 51 Fed. 465 (1892). See also Little Rock & M. R. Co. *v.* St. Louis, I. M. & S. Ry. Co., 59 Fed. 400, apparently *accord.* (1894). But see Chicago, B. & Q. Ry. Co. *v.* Burlington, C. R. & N. Ry. Co., 34 Fed. 481, apparently *contra* (1888).

tween the parties. But when the receiving company takes the freight in the foreign cars because it has none of its own out of use to transport it, or because it would injure the freight to transfer it to its own cars, it is the general practice for the receiving company to pay the usual mileage on the cars taken and used, and such practice is a reasonable one, and should be enforced." It should be added that there is certainly no duty to accept cars which are not of a character to fit in with the equipment of the company to which they are tendered or in such a defective condition as to be dangerous.[1]

On the other hand, there are several cases, although many of them are based upon statute, which hold that the railroad is obliged to accept the cars of another road filled with goods and carry them through to their destination. In an opinion written by Mr. Justice Cooley, in the case of Michigan Central Railroad Company *v.* Smithson,[2] is the following statement, which probably represents the present law: "The primary fact that must rule this controversy is that the Michigan Central Railroad Company is compelled to receive and transport over its road all the varieties of freight cars which are offered to it for the purpose, and which are upon wheels adapted to its gauge. It is compelled to do so, first, because the necessities of commerce demand it. It cannot and would not be tolerated that cars loaded at New York for San Francisco, or at Boston for Chicago, should have their freight transferred from one car to another whenever they passed upon another road. Time would be lost, expense increased, injuries to freight made more numerous, and no corresponding advantage accrue to any one. It is compelled to do so, second, by its own interest. To attempt to stop every car offered to it at its termini, that the freight might be transferred to its own vehicles, would be to drive away from its line a large portion of its traffic and compel it to rely upon a local business."[3] Where this duty to receive the

[1] Chicago, B. & Q. R. R. Co. *v.* Curtis, 51 Neb. 442 (1897); Texas & Pac. Ry. Co. *v.* Carlton, 60 Tex. 397 (1883).

[2] 45 Mich. 212 (1881).

[3] See, to the same effect: Rae *v.* Grand Trunk Ry. Co., 14 Fed. 401 (1882); Louisville & N. R. R. Co. *v.* Boland, 96 Ala. 626 (1892); Peoria & P. M. Ry. Co. *v.* Chicago, R. I. & Pac. Ry. Co., 109 Ill. 135 (1884); Baldwin *v.* Railroad, 50 Ia. 680 (1879); Burlington, etc., Ry. Co. *v.* Dey, 82 Ia. 312 (1891); Louisville, etc., R. R. Co. *v.* Williams, 95 Ky. 199 (1893); Vermont & M. R. R. *v.* Fitchburg R. R., 14 Allen (Mass.) 462 (1867); Mackin *v.* Boston & A. R. R., 135 Mass. 201 (1883); Thomas *v.* Mo. Pac. Ry. Co., 109 Mo. 187 (1891); Chicago, B. & Q. R. Co. *v.* Curtis, 51 Neb. 442 (1897); Hudson Valley Ry. Co. *v.* Boston & M. R. R. Co., 45 N. Y. Misc. 520 (1904); Gulf, C. & S. F. Ry.

cars is established, it is certainly true that the second railroad can make no charge for hauling the cars independently of the regular freight for their contents.[1] On the other hand, it is probable that the second carrier is not under any more obligation to pay mileage for the use of the cars than is stated in the preceding paragraph.[2]

VI.

However, there was certainly no disagreement at common law as to the proposition that shippers cannot insist that the initial carrier shall provide them with sufficient cars for the transportation of their goods to any part of the continent; for the carrier's obligation to provide equipment was always held limited to service over his own route.[3]

But apparently it is not impossible that statutes may even go to the length of requiring such service by reason of commercial necessity. In a very late case,[4] in declaring unconstitutional a statute requiring a railroad to furnish its cars for through transportation off its own route, the United States Supreme Court based its decision upon the point that the statute did not provide sufficient safeguards, not even providing for compensation; but the court suggested that all such legislation is not necessarily unconstitutional: "It was argued, however, that the requirement that the plaintiff in error should deliver its own cars to another road was void under the Fourteenth Amendment as an unlawful taking of its property. In view of the well-known and necessary practice of connecting roads, we are far from saying that a valid law could not be passed to prevent the cost and loss of time entailed by needless transshipment or breaking bulk, in case of an unreasonable refusal by a carrier to interchange cars with another for through traffic. We do not pass upon the question. It is enough

v. Lone Star Salt Co., 26 Tex. Civ. App. 531 (1901); Texas & Pacific Ry. Co. *v.* Texas Short Line R. R. Co., 35 Tex. Civ. App. 387 (1904); Texas & Pac. Ry. Co. *v.* Carlton, 60 Tex. 397 (1883).

[1] Harrison *v.* Midland R. Co., 62 L. J. Q. B. N. S. 225 (1893). But query whether a shipper can get his own cars hauled thus for nothing. Green Bay Lumber Co. *v.* Chicago, R. I. & P. Ry. Co., 102 Ia. 292 (1897).

[2] Oregon Short Line & U. N. Ry. Co. *v.* Northern Pac. R. Co., 61 Fed. 158 (1894).

[3] Pittsburg, Cincinnati & St. Louis R. W. Co. *v.* Morton, 61 Ind. 539, 576 (1878). The same doctrine is held in Houston & T. C. Ry. *v.* Buchanan, 42 Tex. Civ. App. 620 (1906).

[4] Louisville & Nashville R. R. Co. *v.* Central Stock Yards Co., 212 U. S. 132, 143 (1909); citing McNeill *v.* Southern Ry. Co., 202 U. S. 543, 559, 562 (1906).

to observe that such a law perhaps ought to be so limited as to respect the paramount needs of the carrier concerned, and at least could be sustained only with full and adequate regulations for his protection from the loss or undue detention of cars, and for securing due compensation for their use. The constitution of Kentucky is simply a universal undiscriminating requirement, with no adequate provisions such as we have described." [1]

VII.

At common law one public service could not be compelled to enter into arrangements with another for continuous service as a single unit for a single rate which they will later divide between themselves, — such arrangements being left altogether to private agreement. This is well explained in the leading case in the United States Supreme Court, Atchison, Topeka & Santa Fe R. R. *v.* Denver & New Orleans R. R.,[2] where it was squarely held that a railroad might enter into through traffic agreements with one railroad, pro-rating its through rate, and at the same time refuse to enter into a similar agreement with another railroad traversing the same territory as the first and having the same terminus. To quote but one paragraph from the elaborate opinion of Chief Justice Waite: "At common law, a carrier is not bound to carry except on his own line, and we think it quite clear that if he contracts to go beyond he may, in the absence of statutory regulations to the contrary, determine for himself what agencies he will employ. His contract is equivalent to an extension of his line for the purposes of the contract, and if he holds himself out as a carrier beyond the line, so that he may be required to carry in that way for all alike, he may nevertheless confine himself in carrying to the particular route he chooses to use. He puts himself in no worse position, by extending his route with the help of others, than he would occupy if the means of transportation employed were all his own. He

[1] This right to have facilities for interchange of business must not be pressed beyond the duty to permit connections. A connecting service cannot insist upon the utilization of the facilities of a succeeding service to carry on a competing business. The original patron has no right to this sort of service, nor has the initial service in his behalf. There is some law upon this point; but this is plainly outside the present problem.

[2] 110 U. S. 667 (1884).

certainly may select his own agencies and his own associates for doing his own work."[1]

It follows plainly enough that the initial carrier has entire control over the situation.[2] In the recent Citrous Fruit case in the United States Supreme Court[3] the policy of the Pacific railroads, under which the right of routing beyond its own terminal was reserved to the initial carrier to exercise in his discretion at any stage as the condition of guaranteeing through rates to the shipper, was held its right beyond question. As the court tersely said in its decision, "The important facts that control the situation are that the carrier need not agree to carry beyond its own road, and may agree upon joint through tariff rates or not, as seems best for its own interests. Having these rights of contract, the carrier may make such terms as it pleases, at least so long as they are reasonable and do not otherwise violate the law."

VIII.

This modern conception of the fuller extent of the public duty to all concerned in relation to the making of connections has manifested itself of late in many statutes, requiring proper arrangements for the interchange of business at junction points, which now receive more respect from the courts than they once did. Indeed

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[1] These doctrines also prevail generally in the state courts. Southern Indiana Exp. Co. *v.* United States Exp. Co., 92 Fed. 1022 (1899); Coles *v.* Central Railroad Co., 86 Ga. 251 (1890); State *v.* Wrightsville & T. R. Co., 104 Ga. 437 (1898); Snow *v.* Indiana, B. & W. Ry. Co., 109 Ind. 422 (1886).

[2] Citation should be made here of the many cases which held that the original Interstate Commerce Act left the railroads free as before to make such arrangements for through routing, billing, or rating as they pleased without its being a refusal of equal facilities for the interchange of traffic to make such through arrangements with one company while refusing to do so with another. Central Stock Yards Co. *v.* Louisville & N. Ry., 192 U. S. 568 (1904); Kentucky & I. Bridge Co. *v.* Louisville & N. R. R., 37 Fed. 567, 629, 630 (1889); Little Rock & M. R. R. Co. *v.* St. Louis, I. M. & S. Ry., 41 Fed. 559 (1890); Chicago & N. W. Ry. *v.* Osborne, 52 Fed. 912 (1892); Oregon Short Line & U. N. Ry. *v.* Northern P. R. R., 61 Fed. 158 (1894), affirming 51 Fed. 465 (1892); Little Rock & M. R. Co. *v.* St. Louis S. W. R. Co., 63 Fed. 775 (1894); St. Louis Drayage Co. *v.* Louisville & N. R. Co., 65 Fed. 39 (1894); Prescott & A. C. R. Co. *v.* Atchison T. & S. F. R. Co., 73 Fed. 438 (1896); Gulf, C. & S. F. Ry. Co. *v.* Miami S. S. Co., 86 Fed. 407 (1898); Allen *v.* Oregon R. & Nav. Co., 98 Fed. 16 (1899). But see (practically overruled) New York & N. Ry. Co. *v.* New York & N. E. R. Co., 50 Fed. 867 (1892); Augusta S. R. Co. *v.* Wrightsville & T. R. Co., 74 Fed. 522 (1896).

[3] Southern Pacific Company *v.* Interstate Commerce Commission, 200 U. S. 536 (1906).

the powers granted commissions in this respect now go so far as to authorize the making of orders as to running of trains by the intersecting roads, so as to make convenient connections.[1] It is characteristic of the new appreciation of the extent of public duty that the United States Supreme Court found no difficulty even with this extreme type of regulation:[2] "This reduces itself to the contention that, although the governmental power to regulate exists in the interest of the public, yet it does not extend to securing to the public reasonable facilities for making connection between different carriers. But the proposition destroys itself, since at one and the same time it admits the plenary power to regulate and yet virtually denies the efficiency of that authority. That power, as we have seen, takes its origin from the *quasi*-public nature of the business in which the carrier is engaged, and embraces that business in its entirety, which of course includes the duty to require carriers to make reasonable connections with other roads, so as to promote the convenience of the traveling public. In considering the facts found below as to the connection in question, that is, the population contained in the large territory whose convenience was subserved by the connection, and the admission of the railroad as to the importance of the connection, we conclude that the order in question, considered from the point of view of the requirements of the public interest, was one coming clearly within the scope of the power to enforce just and reasonable regulations."

But the statutes are going further than to make the common law more intensive; they are making the legal obligation more extensive. The common law right of the initial company to make through traffic arrangements with some one connecting line and throw all the business which it will take at the through rate into the hands of that one line, notwithstanding the wishes of the shipper, has, of late, caused such fears that statutes are being passed giving the power to the regulating body to compel the making of a joint rate. This power was given to the English Railway and Canal Commission in 1888, and to the Interstate Commerce Commission in 1906. The federal legislation had been foreshadowed, as usually has happened, by some legislation in

[1] Louisville & N. R. R. Co. *v.* Pittsburg, etc., Coal Co., 111 Ky. 960 (1901); Louisville & N. R. Co. *v.* Central Stockyards Co., 30 Ky. Law Rep. 18 (1906); Jacobson *v.* Wisconsin, M. & P. R. R. Co., 71 Minn. 519 (1898); State of Missouri *v.* St. Louis & S. F. R. R. Co., 105 Mo. App. 207 (1904).

[2] Atlantic Coast Line *v.* North Carolina Corp. Com'n, 206 U. S. 1, 22 (1907). See also Southern Railway Co. *v.* Commonwealth, 98 Va. 758 (1900).

the various states, Minnesota and Texas for example. It will be noticed that the commission by these statutes is to judge as to whether public convenience requires the additional through routes asked. The shipper, therefore, now as before has no rights in the matter until the through rate has been duly established; then, of course, he may demand it, as a Texas case holds.[1] The question has been raised as to whether such statutes are constitutional; but in view of the modern notion of obligatory connection for proper service for all concerned, there seems to be little doubt. In holding the Minnesota statute valid,[2] Mr. Justice Collins said: "We see no reason why, under the amendatory act, the commission cannot lawfully compel a joint arrangement in a case like this. The evidence shows that the location of the Duluth road and the Minneapolis and St. Louis road, their track facilities, equipment, etc., are such that, by operating together under joint traffic agreements, the cost of the service can be greatly lessened. The public has, at least, a right to share in the benefits of this condition. If it is judicious to do so and of public benefit to have joint traffic arrangements in any given case, why should not the public be permitted to compel that such arrangements be made?"

Bruce Wyman.

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[1] Inman *v.* St. Louis S. W. Ry. Co., 14 Tex. Civ. App. 39 (1896).

[2] State *v.* Minneapolis & St. L. R. R. Co., 80 Minn. 191 (1900).